

RESOLUTION NO. 17-2019

CRITERIA FOR LOCAL DETERMINATION OF EVASION OF THE SUBDIVISION AND PLATTING ACT AND SUBDIVISION AND SANITATION ACT

WHEREAS, the Criteria for Local Determination of Evasion of the Subdivision and Platting Act and the Subdivision and Sanitation Act, in the Jefferson County Subdivision Regulations adopted January 9, 2002 and amended last in 2013, is in need of revision because of legislative changes to the Act, recent Attorney General Opinions and court decisions pertaining to the Act, and

WHEREAS, the Legislature, in adopting and amending the Subdivision and Platting Act, §76-3-101 et. seq., has provided: (1) that parcels of land containing less than 160 acres are building sites and that the creation of these parcels should be reviewed and approved by the local governing body applying the primary review criteria set forth in §76-3-608, Montana Code Annotated (MCA); (2) that the exemptions from subdivision review under §76-3-201 and §76-3-207, MCA are intended to relieve a landowner from the requirements of local review when the division of land either creates no additional building sites or creates so few building sites that only minimal impact will likely result; and (3) that the purpose of the exemptions is not to provide a means of creating numerous building sites without subdivision review but rather to deal with the exceptional circumstance when subdivision review is unnecessary; and

WHEREAS, the Montana Supreme Court decisions in Florence-Carlton School District v. Ravalli County Board of Commissioners; Leach v. Visser; and State ex rel. Dreher v. Fuller; has recognized a county's right to narrowly interpret and enforce the provisions of the Montana Subdivision and Platting Act, especially those pertaining to the use of exemptions; and

WHEREAS, the parcels of land created by exemptions often do not provide for: (1) the coordination of roads within the divided land or with other roads, both existing and planned; (2) the dedication of land for roadways and public utility easements; (3) the provision of adequate open spaces, for travel, light, air and recreation; (4) the provisions of adequate transportation, water drainage, and sanitary facilities; (5) the avoidance of minimizing of congestion; (6) the avoidance of land division that would involve unnecessary environmental degradation; and (7) the avoidance of danger or injury to health, safety or welfare by reason of natural hazard or the lack of water, drainage, access, transportation, schools or other public services, or would necessitate an excessive expenditure of public funds for the supply of such service; and

WHEREAS, the likelihood that land development problems will occur is greatly increased when building sites are created without public review and further divided without review; and

WHEREAS, the Jefferson County Board of Commissioners has established the necessary procedures for expedient review of subdivisions creating five or fewer parcels, and thus, has diminished the justification for avoiding review through use of exemptions; and

WHEREAS, in consideration of the above, and in order to provide separate uniform standards for certificates of survey submitted for properties exempt from subdivision review and those that are subject to subdivision review, and, further,

WHEREAS, to avoid confusion and contradictions that may arise from the combination of exempt and non-exempt survey features on the same certificate of survey, it is also the purpose of this resolution to separate the certificates of survey themselves as well as the review processes between exempt and non-exempt certificates of survey, thereby eliminating any combination of them.

NOW THEREFORE, BE IT RESOLVED, this Resolution shall supersede any and all previous versions of Criteria for Local Determination of Evasion of the Subdivision and Platting Act and Subdivision and Sanitation Act, including but not limited to those adopted under Resolution 09-2013, Resolution 07-2008, and Resolution 33-2006. All prior resolutions and amended resolutions related to the criteria for local determination of evasion of the Subdivision and Platting Act and Subdivision and Sanitation Act are null and void and no longer of any force or effect. . The Board of County Commissioners hereby adopts the following criteria, which shall guide Jefferson County's Survey Review Committee and this Board in determining whether the use of an exemption has been adopted for the purposes of evading the Acts.

I. PROCEDURES AND GENERAL REQUIREMENTS

- A. Under the power and authority vested by the Board of Commissioners, the Survey Review Committee and its representatives may examine a division or aggregation of land to determine whether or not the requirements of Title 76, Chapter 3, MCA apply to the division or aggregation.
- B. All certificates of survey submitted to the Survey Review Committee under this part shall be subject to the County's Examining Land Surveyor's review prior to recordation, and shall comply with and be subject to the requirements set forth in 24.183.1104, ARM. Jefferson County is responsible for forwarding all certificates of survey to the County's Examining Land Surveyor when such a review is required.
- C. Five paper copies of the draft certificate of survey must be submitted to the Clerk and Recorder when requesting review by the Survey Review Committee. Copies of surveys submitted must be 11-inches by 17-inches (11"x17") in size or larger. Two mylar copies of the certificate of survey must be presented for recordation.
- D. The applicant is required to pay applicable review fees when the application, certificate of survey, and any accompanying materials are submitted for review. As authorized under §76-3-201(5) and §76-3-207(4), MCA, the review fee for exemption

claims is \$200.00. These fees help to cover the costs of review by the Survey Review Committee and the County's Examining Land Surveyor. The Examining Land Surveyor's fees may increase depending on the complexity of the survey and the additional time required for the review. The applicant will be responsible for covering any additional fees prior to recording the survey.

- E. Retracement surveys are reviewed by the Survey Review Committee for no charge. The County's Examining Land Surveyor review fees for retracement surveys are \$65.00 per review. The Examining Land Surveyor's fees may increase depending on the complexity of the survey and the additional time required for the review. The applicant will be responsible for covering any additional fees prior to recording the survey.
- F. Any person seeking exemption from the requirements of the Montana Subdivision and Platting Act, §76-3-101, MCA (the Act), and the Montana Sanitation in Subdivisions Act, §76-4-101, MCA (the Sanitation Act) shall submit to the Jefferson County Clerk and Recorder the following items: (1) a certificate of survey or where a survey is not required an instrument of conveyance and (2) evidence of and an affidavit affirming entitlement to the claimed exemption. All certificates of survey submitted must clearly demonstrate the exemption(s) used and include all required certifications.
- G. When a certificate of survey or instrument of conveyance is submitted to the Clerk and Recorder, the Clerk and Recorder shall cause the documents to be reviewed by the Survey Review Committee, which includes a County Commissioner, the County Clerk and Recorder, the County Attorney, the County Planner, and the County Sanitarian. The Survey Review Committee typically meets weekly to review proposed exempt land divisions to determine whether they comply with the requirements set forth in this Resolution, the Montana Subdivision and Platting Act and the Montana Sanitation in Subdivisions Act.
- H. Exemption land divisions or aggregations claimed under §76-3-207, MCA are subject to local zoning regulations adopted pursuant to Title 76, Chapter 2 as addressed in §76-3-207(1), MCA.
- I. If the Survey Review Committee finds that the proposed use of the exemption complies with the statutes and these criteria, they shall advise the Clerk and Recorder to file the certificate of survey or record the instrument of conveyance and accompanying documents.
- J. If the proposed use of the exemption does not comply with the statutes and these criteria, the Survey Review Committee shall advise the Clerk and Recorder not to file or record the documents, and the Clerk shall return the materials, with corrections or written reasons for denial to the landowner or his/her agent. If there is a question of whether an exemption is claimed for the purpose of evading review under the Subdivision and Platting Act or Sanitation Act, the Survey Review Committee may

require the person claiming the exemption to furnish evidence of entitlement to the exemption. State ex rel. Dreher v. Fuller, 1993.

- K. Any person whose proposed use of an exemption has been denied by the Survey Review Committee may appeal the decision to Jefferson County's Board of Commissioners. The person must request a hearing in front of the Board between themselves and the designated agents of the County within 45 calendar days of receiving the Survey Review Committee's decision, and may submit additional evidence to show that the use of the exemption in question is not intended to evade the Acts. After such hearing, the Commissioners shall issue a written decision affirming or reversing the Survey Review Committee's decision. The Commission's letter must include findings that demonstrate the basis for their decision. The certificate of survey, instruments of conveyance, and Commission's authorization letter shall be recorded with the Jefferson County Clerk & Recorder.
- L. If the use of an exemption is determined to be an evasion of the Acts, the landowner proposing to use the exemption may submit a subdivision application for the proposed land division.
- M. To assist in the implementation of this review process and to monitor those divisions of land created using an exemption, the Clerk and Recorder may cause the following identification codes to be added to the numbering of recorded certificates of survey filed after the effective date of this resolution:

FC - Family Conveyance, §76-3-207(1)(b), MCA

CM - Construction Mortgage, §76-3-201(1)(b), MCA

BR – Boundary Relocation, §76-3-207(1)(a), §76-3-207(1)(d),
§76-3-207(1)(e), MCA

AG - Agricultural Exemption, §76-3-207(1)(c), MCA

II. GENERAL REVIEW CRITERIA

- A. The Board of Commissioners and its agents, when determining whether an exemption is being claimed for the purposes of evading the Acts, shall consider all of the surrounding circumstances. These circumstances may include, but are not limited to, the prior history of the particular tract in question, the proposed configuration of the tracts if the proposed division is completed, and any pattern of exempt divisions that will result in the equivalent of a subdivision without local government review. State ex rel. Dreher v. Fuller 1993.
- B. Those definitions as set forth in §76-3-101 et seq., MCA, and §76-4-101 MCA, are hereby adopted as definitions for these exemption review criteria.
- C. All certificates of survey filed under an exemption must include complete boundary descriptions for each parcel that has been amended or created, and must comply with and be subject to the requirements set forth in 24.183.1104, ARM.

- D. Prior to filing a certificate of survey, the county treasurer must certify that all real property taxes and special assessments, including those associated with Rural or Special Improvement Districts, assessed and levied on the land to be divided, have been paid in full as required under §76-3-207(3)(a), MCA.

III. EXEMPTION REVIEW CRITERIA

A. A GIFT OR SALE TO A MEMBER OF THE IMMEDIATE FAMILY - §76-3-207(1)(b),

1. Statement of Intent: The intention of this exemption is to allow a landowner to convey one parcel to each member of a landowner's immediate family without local subdivision review. A single parcel may be conveyed to each member of the immediate family under this exemption in each county where the landowner owns property.
2. One conveyance of a parcel in Jefferson County to each member of the landowner's immediate family is eligible for exemption from subdivision review under this exemption. "Immediate family member" means a spouse, children by blood or adoption, or parents of the grantor as defined by Montana's Attorney General and §76-3-103(8), MCA.
3. Proof of the relationships (i.e. birth certificate, marriage license, adoption papers, etc.) shall be submitted with the certificate of survey to demonstrate that each person designated to receive a parcel would be considered an eligible immediate family member.
4. Parcels for family conveyance cannot be created from lots located within a platted subdivision. Subdivision review is required to create parcels to transfer to family members if the parcel proposed for division is located within a platted subdivision.
5. This exemption can only be used by grantors who are natural persons and not by legal entities such as corporations, partnerships, and trusts.
6. Parcels containing less than twenty (20) acres must comply with sanitary restrictions as required by under the Montana Department of Environmental Quality.
7. If recipients are under age 18, documentation of trust, custodianship pursuant to the Montana Uniform Transfers to Minors Act, etc. must be submitted.
8. Jefferson County requires that any of the family conveyance tracts created following the use of this exemption be retained by the grantee(s) for a period of three (3) years. Notice of the requirement for the grantees to retain the

family conveyance parcels for three (3) years shall be included on the face of the certificate of survey. The first day of the three (3) year retention period shall occur on the date that the certificate of survey and deeds are recorded. This period shall remain in effect for five years from that effective date, unless the following circumstances occur:

- a. The three (3) year retention period will be automatically lifted when there is an involuntary transfer such as foreclosure, death, judicial sale, condemnation, or bankruptcy.
 - b. In the case of illness or other extenuating circumstances, a grantee may request that the County consider rescinding the requirement that a family conveyance parcel must be retained for a three (3) year period.
 - i. To initiate review, a letter from the grantee outlining the circumstances shall be submitted to the Survey Review Committee.
 - ii. The Survey Review Committee shall review the request and make a written recommendation and findings for the County Commissioners to consider.
 - iii. The County Commissioners shall hold a meeting with the Survey Review Committee and the grantee requesting relief to review the particular circumstances. At that meeting, the Commissioners will consider the grantee's request, the Survey Review Committee's recommendation and findings, and any additional information presented.
 - iv. If the County Commissioners determine that the grantee's circumstances warrant the lifting of the three (3) year retention period, the Commissioners shall issue a letter removing the transfer restriction.
 - v. The grantee shall record the letter with the Jefferson County Clerk & Recorder's Office to effectuate the removal of the three (3) year requirement for the grantee's parcel only.
 - c. The transfer limitation may also be lifted if the grantee files for subdivision review or provides the Survey Review Committee with evidence that the transfer is not intended to evade the Acts.
9. Except for the transfers permitted above, the marketing, transfer, or sale of the gifted or remainder parcel(s) created using the family conveyance exemption within three (3) years of creation of such parcels will result in the presumption

that the exemption was used for the purpose of evading the Acts and such actions shall be subject to the following penalties:

- a. The recordation of the instrument of conveyance of a parcel created by using this exemption within three (3) years of creation shall be subject to refusal by the Clerk and Recorder's Office, or
 - b. The County shall file a court action to set aside the land transfer.
10. Filing of any certificate of survey (or recording of an instrument of conveyance) that would use this exemption to create a parcel for conveyance to a family member must show the name of the grantee, relationship to the landowner, and the parcel to be conveyed under this exemption, and the landowner's certification of compliance. The certificate of survey shall be accompanied by an affidavit of exemption eligibility (see attached Exhibit A).
 11. A certificate of survey for a family conveyance must also include deeds of conveyance for all parcels for filing along with the necessary filing fees.

B. SECURITY FOR A CONSTRUCTION MORTGAGE, LIEN OR TRUST INDENTURE - §76-3-201(1)(b), MCA

1. Statement of Intent: Lending institutions and federal home loan guaranty programs often require landowners that are buying a tract with financing or through a contract for deed to hold title to the specific site on which the home, structure or improvements will be built. The intended purpose of this exemption is to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes. For the purposes of this part, construction of a home includes locating or installing a Class A manufactured home on a permanent foundation with permanent utility connections.
2. This exemption applies:
 - a. To a division of any size;
 - b. If the land that is divided is only conveyed to the financial or lending institution to which the mortgage, lien, or trust indenture was given, or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture. A transfer of the divided land, by the owner of the property at the time the land was divided, to any party other than a financial or lending institution to whom the mortgage, lien, or trust indenture was given subjects the division of land to the requirements of the Acts; and
 - c. To a parcel that is created to provide security under this subsection. The remainder of the tract of land, if applicable, is subject to the requirements of the Acts per §76-3-201(3)(c), MCA.

3. This exemption is not available to simply create a parcel without review by claiming that the parcel will be used for security to finance or refinance construction of a home, structure or improvements on the proposed lot. This exemption may not be properly invoked unless:
 - a. The claimant is purchasing a larger tract through financing or a contract for deed and thus does not hold title, and
 - b. A lending institution requires the landowner to hold title to a smaller parcel of the tract because the smaller tract is required as security for a building construction loan.
4. This exemption does not create a parcel until said mortgage, lien or trust indenture secured by the parcel is foreclosed under the provisions established by the lending agency in compliance with Montana State law.
5. Financial agreements shall be secured through a lending institute or mortgage company. No private party financial agreements will be accepted.
6. The use of this exemption is presumed to have been adopted for the purpose of evading the Acts if:
 - a. It will create more than one building site from the original tract less than 160 acres, or
 - b. Title to the exempted parcel will not be initially obtained by the lending institution if foreclosure occurs.
7. When this exemption is to be used, the landowner shall submit the following items to the Clerk and Recorder:
 - a. A signed statement from a lending institution that the creation of the exempted parcel is necessary to secure financing or refinancing for buildings or other improvements on the parcel,
 - b. A statement explaining who will have title to and possession of the balance of the original parcel after title to the exempted interest is conveyed,
 - c. The deed, trust indenture or mortgage for the exempted interest, which shall be put of record with the Clerk & Recorder's Office with the certificate of survey, must state that the interest is being created only to secure a construction mortgage, lien, or trust indenture, and
 - d. A certificate of survey of the original parcel, with a dashed line describing the boundaries of the tract of land to be used for providing security along with the necessary filing fees.

C. CREATE A LOT FOR AGRICULTURAL PURPOSE - §76-3-207(1)(c), MCA (Temporary)

1. Statement of Intent: The intent of this exemption is to allow a landowner to create a parcel without local review where the parcel will be used exclusively for the agricultural purposes and where no residential, commercial, or industrial uses will be established.
2. Jefferson County defines "agricultural purposes" for purposes of these evasion criteria as the production of food, feed, fiber commodities, livestock, poultry, bees, biological control insects, fruits and vegetables, sod, ornamental, nursery, and horticultural crops. This definition specifically excludes the establishment of residential, commercial, or industrial uses, including facilities that commercially process agricultural products.
3. This exemption cannot be used within a platted subdivision.
4. Agricultural lands are exempt from review by the Montana Department of Environmental Quality (DEQ), provided the applicable exemption under the Sanitation in Subdivisions Act is properly invoked by the property owner.
5. The following conditions must be met or the use of the exemption will be presumed to have been adopted for purposes of evading the Acts:
 - a. The parties to the transaction must enter into a covenant running with the land that states that the divided land shall be used exclusively for agricultural purposes (see attached Exhibit B). The Board of County Commissioners must agree to the creation of an agricultural parcel and sign the covenant. The covenant shall be revocable only by consent of the Board of Commissioners once subdivision review has occurred.
 - b. The landowner must demonstrate that the planned use of the exempted parcel shall only be for agricultural purposes and that no residential, commercial or industrial uses will be established or built requiring sewer or domestic water facilities (e.g. a statement signed by the buyer). An agricultural water source shall only be established if the landowner can demonstrate that its sole purpose is for agricultural uses. Use of an agricultural water source for any purpose other than agricultural purposes subjects the parcel to the Acts.
 - c. A change in use of the land for anything other than agricultural purposes subjects the parcel to review as a minor subdivision per §76-3-207(2)(b), MCA.
 - d. Residential, commercial or industrial structures, including facilities for commercial processing of agricultural products may not be

utilized, constructed, or erected on parcels created under this exemption unless the covenant is revoked.

6. A certificate of survey creating a parcel for agricultural purposes must also include a signed Exhibit B agricultural covenant document and deeds of conveyance for filing along with necessary filing fees.

C. CREATE A LOT FOR AGRICULTURAL PURPOSE - §76-3-207(1)(c), MCA (Effective October 1, 2019)

1. Statement of Intent: The intent of this exemption is to allow a landowner to create a parcel without local review where the parcel will be used exclusively for the agricultural purposes and where no residential, commercial, or industrial uses will be established.
2. "Agricultural purposes" for purposes of these evasion criteria, mean the production of food, feed, fiber commodities, livestock, poultry, bees, biological control insects, fruits and vegetables, sod, ornamental, nursery, and horticultural crops. This definition specifically excludes the establishment of residential, commercial, or industrial uses, including facilities that commercially process agricultural products.
3. This exemption cannot be used within a platted subdivision.
4. Agricultural lands are exempt from review by the Montana Department of Environmental Quality (DEQ), provided the applicable exemption under the Sanitation in Subdivisions Act is properly invoked by the property owner.
5. The following conditions must be met or the use of the exemption will be presumed to have been adopted for purposes of evading the Acts:
 - a. The parties to the transaction must enter into a covenant running with the land that states that the divided land shall be used exclusively for agricultural purposes (see attached Exhibit B). The Board of County Commissioners must agree to the creation of an agricultural parcel and sign the covenant. The covenant shall be revocable only by consent of the Board of Commissioners once subdivision review has occurred or as outlined in III.C.5.d-f, below.
 - b. The landowner must demonstrate that the planned use of the exempted parcel shall only be for agricultural purposes and that no residential, commercial or industrial uses will be established or built requiring sewer or domestic water facilities (e.g. a statement signed by the buyer). An agricultural water source shall only be established if the landowner can demonstrate that its sole purpose is for agricultural uses. Use of an agricultural water source for any purpose other than agricultural purposes subjects the parcel to the Acts unless the Board

of County Commissioners revokes the covenant as addressed in II.C.5.d-f, below.

- c. A change in use of the land for anything other than agricultural purposes subjects the parcel to review as a minor subdivision per §76-3-207(2)(b), MCA. However, the governing body, in its discretion, may revoke the covenant provided for in §76-3-207(1)(c), MCA and the division may proceed without subdivision review if:
 - i. The original lot lines are restored through aggregation of the covenanted land prior to or in conjunction with the revoking of the covenant; or
 - ii. A government or public entity seeks to use the land for public purposes as defined in the governing body's review criteria pursuant to 76-3-504(1)(p), MCA.
 - d. If a governing body proposes to revoke a covenant pursuant to III.C.5.d.ii, above, the governing body shall hold a public hearing. Within 15 days of the hearing, the governing body shall review written findings of fact and a decision based on the record. If the governing body approves the revoking of the covenant, the approval must be recorded with the Clerk & Recorder.
 - e. The revoking of a covenant as outlined in III.C.5.d-e does not affect sanitation restrictions imposed under Title 76, Chapter 4.
 - f. Residential, commercial or industrial structures, including facilities for commercial processing of agricultural products may not be utilized, constructed, or erected on parcels created under this exemption unless the covenant is revoked.
6. A certificate of survey creating a parcel for agricultural purposes must also include a signed Exhibit B agricultural covenant document and deeds of conveyance for filing along with necessary filing fees.

D. RELOCATION OF COMMON BOUNDARY - §76-3-201(1)(a), §76-3-201(1)(d), §76-3-201(1)(e), §76-3-201(1)(f), MCA

- 1. Statement of Intent: The intended purpose of this exemption is to allow a change in the location of a boundary line between parcels and to allow a transfer of a tract to effect that change in location without subdivision review, unless subject to review under §76-3-207(2)(a), MCA. The following exemptions apply to boundary line relocations:
 - a. §76-3-207(1)(a), MCA applies to boundary line relocations where all lots involved are located outside of a platted subdivision.

- b. §76-3-207(1)(d), MCA applies to boundary line relocations involving five or few lots where all lots involved are located inside of a platted subdivision. Note: boundary line adjustments involving six (6) or more affected lots within a platted subdivision require review by the governing body before an amended plat can be filed.
 - c. §76-3-207(1)(e), MCA applies to boundary line relocations involving a single lot within a platted subdivision and adjoining land outside a platted subdivision. five or few lots where all lots involved are located inside of a platted subdivision. Note: A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.
- 2. If the relocation of a common boundary would result in the creation of an additional tract of land, the division of land must be reviewed as a subdivision.
 - 3. Certificates of survey claiming this exemption must include a legal description of the newly created parcels and clearly distinguish between the existing boundary location and all new boundaries. This shall be accomplished by representing the existing boundary with a dashed line and all new boundaries with a solid line.
 - 4. The cumulative relocation of common boundaries of lots for five or fewer lots within a platted subdivision do not require subdivision review, as long as no additional lots are created and the relocation does not materially change any portion of the approved subdivision.
 - 5. An affidavit (see Exhibit D) must accompany the certificate of survey setting forth what, if any, mortgages, trust indentures, deeds of trust, liens, or encumbrances exist in connection with the subject properties. The Exhibit D affidavit must be completed and submitted for each parcel involved in the proposed boundary line relocation.
 - 6. The certificate of survey must contain the signatures of all record owners of the parcels involved, and be submitted with Montana Department of Environmental Quality approval unless validly exempt, deeds describing the newly created parcels, and the necessary filing fees.

E. AGGREGATION - §76-3-201(1)(f), MCA

- 1. Statement of Intent: The intended purpose of this exemption is to allow for the elimination of a boundary line between adjoining properties and the creation of a new legal description. The number of existing lots are reduced when this exemption is used.

2. Aggregation of parcels or lots when the certificate of survey shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established does not require subdivision review. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.
3. The certificate of survey or instrument of conveyance must clearly state the purpose is to declare the owner's intention that the tracts be merged, and the survey must assign a legal description that describes the larger aggregate parcel.
4. Per 17.36.605(3), ARM, aggregations of parcels are not subdivisions subject to review, except that an aggregation is subject to review under §76-4-130, MCA, if any parcel included in the aggregation has a previous approval issued under Title 76, chapter 4, part 1, MCA.
5. The certificate of survey must show the existing boundary with a dashed line and state that the boundaries of the original parcels have been eliminated.
6. Certificates of survey showing the aggregation of lots must be accompanied by Exhibit E and any information required for sanitation compliance, deed(s) for the newly described parcel(s), and necessary filing fees.

F. REMAINDERS

1. Statement of Intent: A "remainder" parcel is the balance of the original tract that is left following the segregation of other parcels from the tract created by the following exemptions from the MSPA:
 - a. Divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family,
 - b. Divisions made outside of platted subdivisions by gift, sale or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes.
2. Tracts or parcels less than twenty (20) acres are subject to the Montana Department of Environmental Quality sanitary restrictions, as well as §76-4-125(2), MCA, and §76-4-125(3), MCA.
3. All remainders containing less than one hundred sixty (160) acres must be included in the certificate of survey along with a boundary description. These parcels must be surveyed by or under the supervision of a registered land surveyor in compliance with state law unless the parcel can be described as

1/32 or larger aliquot part of a United States government section or a United States government lot.

4. A remainder less than one hundred sixty (160) acres in size, contiguous to a proposed subdivision or exemption, will be considered a parcel and will not evade review as a remainder.

G. EXEMPTIONS FROM SANITARY REVIEW

1. Certificates of survey claiming exemption from sanitary review under 17.36.605(2)(a), ARM must clearly denote on the parcel and the certificate of survey claiming the exemption that the parcel is subject to sanitary restrictions. Such surveys must be submitted with an affidavit of eligibility setting forth the applicant's eligibility to claim said exemption (see attached Exhibit C).
2. Certificates of survey claiming exemption from sanitary review under 17.36.605(2)(b), ARM must provide documentation of the Montana Department of Environmental Quality approval issued under Title 76, chapter 4, part 1, MCA demonstrating the division of land will not cause previously approved facilities to deviate from the conditions of approval.
3. Certificates of survey claiming exemption from sanitary review under 17.36.605(2)(c), ARM must provide proof that existing septic tanks have been pumped within the previous three years, demonstrate there is adequate acreage sufficient to accommodate a replacement drainfield, that existing wells are adequate for the proposed uses, and that adequate storm drainage and solid waste disposal is provided.
4. Certificates of survey claiming exemption from sanitary review under 76-4-125(2)(e)(ii), MCA, must be submitted with documentation establishing the construction date of the current system as well as adequate acreage sufficient to accommodate a replacement drainfield 76-4-125 (3), MCA.

DATED this 6 day of August, 2019.

ATTEST:

Bonnie Ramey
BONNIE RAMEY
CLERK AND RECORDER

Leonard Wortman
LEONARD WORTMAN, CHAIR

Bob Mullen
BOB MULLEN, COMMISSIONER

Cory Kirsch
CORY KIRSCH, COMMISSIONER

**EXHIBIT A
FAMILY CONVEYANCE AFFIDAVIT**

STATE OF MONTANA)

: ss.

AFFIDAVIT

COUNTY OF JEFFERSON)

COMES NOW, _____, and being first duly sworn, deposes and upon his/her oath answers the following:

1. Who is the owner of record of this property? _____. If you are not the owner, please describe your relationship to the contract holder or entity owning the property. _____
2. Is this property subject to any mortgages, trust indentures, deeds of trust, liens, including judgement liens, or encumbrances? (N.B.: The office of the Jefferson County Clerk and Recorder does not do a title search for these.) _____
3. Have you made prior subdivision exemption claims on any property in Jefferson County? _____
4. Is your primary residence located on this parcel? _____
5. Do you own more than one parcel in Jefferson County? _____
6. Why are you proposing this division of land? _____
7. What is the history of this tract? _____
8. How long have you owned or had an interest in this parcel? _____
9. Other than the intended disposition set forth in your application on file with the Survey Review Committee, is there any type of agreement, oral or written, regarding the creation, sale or development of the tracts involved in this division of land? _____
10. Do you agree that your immediate family recipients will not sell or transfer any of the tracts created under the family conveyance exemption for a period of three (3) years, unless the recipient files for subdivision review or provides the Survey Review Committee with evidence that the transfer or sale is not intended to evade the Acts? _____
11. Is the remainder parcel included in this survey? _____

12. If not, what is the approximate acreage of the remainder? _____

13. Has/Have the proposed recipient(s) received another parcel in Jefferson County through the use of the family conveyance exemption? If so, who conveyed the parcel to them? _____

WITHIN THE LAST THREE (3) YEARS:

14. Was the parcel created or affected by a previous exemption? _____

15. Has any intended grantee expressed an interest in subdividing the parcel?

16. Has a subdivision proposal for the parcel been withdrawn or denied? _____

17. Have any persons other than your immediate family members expressed an interest in purchasing or developing any of the tracts involved in this division of land? _____

18. Have you, or your immediate family members, had any discussion with a person interested in purchasing a portion of your land? _____

LANDOWNER

SUBSCRIBED AND SWORN TO before this _____ day of _____, 20____

(NOTARIAL SEAL)

Notary Public, State of Montana

Residing at: _____

My Commission expires: _____

EXHIBIT B
DECLARATION OF AGRICULTURAL COVENANT

This Declaration of Agricultural Covenant (Covenant) is between the Jefferson County Montana Board of County Commissioners (Commission), landowners _____ (landowners), and purchasers _____ (purchasers), and relates to a parcel of land to be created from a tract of land more particularly described as _____ on Certificate of Survey No. _____, Folio No. _____ on file and of record in the Office of the Jefferson County Montana Clerk and Recorder.

WHEREAS, landowner is using an agricultural exemption from subdivision review pursuant to §76-3-207(1)(c), Montana Code Annotated (MCA) to create a parcel to be known as _____ on Certificate of Survey No. _____, Folio No. _____ on file and of record in the Office of the Jefferson County Montana Clerk and Recorder; and,

WHEREAS, an agriculturally exempt parcel can be created if the parcel contains less than 160 acres and is used exclusively for “agricultural purposes.” Jefferson County defines “agricultural purposes” as the production of food, feed, fiber commodities, livestock, poultry, bees, biological control insects, fruits and vegetables, sod, ornamental, nursery, and horticultural crops. This definition specifically excludes the use of the property for residential, commercial or industrial uses, including facilities that commercially process agricultural products; and,

WHEREAS, through this Covenant, the parties wish to impose certain restrictions on the future use of the property in order to comply with the requirements of §76-2-207(1)(c), MCA, the Subdivision and Platting Act (Title 76, chapter 3, Montana Code Annotated), and the Sanitation Act (Title 76, chapter 4, Montana Code Annotated). This Covenant provides notice to future purchasers and the public of the restrictions placed on the property.

NOW THEREFORE, the parties declare, acknowledge, and agree: 1) this agricultural parcel contains less than 160 acres; 2) possession and use of the parcel shall be subject to this Covenant; 3) any sale or conveyance of the parcel is subject to this Covenant; and, 4) this Covenant shall run with the land, and shall bind all persons or entities having any right, title, or interest in the parcel or any part thereof, and their heirs, successors and assigns.

The parties further declare, acknowledge, and agree: 1) the planned use of the exempted parcel shall conform to Jefferson County's definition of "agricultural purposes" and shall only be use for "agricultural purposes;" 2) the parcel shall not be used for residential, commercial or industrial purposes, including facilities which commercially process agricultural products; 3) no residential, commercial, or industrial structures which require sewer or domestic water facilities shall be constructed or placed on the parcel; 4) an agricultural water source is permitted but its use is limited to only agricultural uses; and, 5) the use of an agricultural water source for any purpose other than agricultural uses subjects the parcel to the requirements of the Subdivision and Platting Act (Title 76,chapter 3, Montana Code Annotated), the Sanitation Act (Title 76, chapter 4, Montana Code Annotated), or to both.

FURTHER, landowner(s) declare(s) the original tract is/is not (*circle one*) subject to certain mortgages, trust indentures, deeds of trust, liens (including judgment liens), and encumbrances or security interests of record.

THIS COVENANT may only be revoked by the Board of Jefferson County Commissioners following review and approval of a subdivision application as required under §76-3-207(2)(b), MCA or as addressed under III.C.5.

Dated this ____ day of _____, 20__.

Signature of Landowner(s)

Printed name(s)

State of Montana

County of _____

This instrument was signed before me on the ____ day of _____, 20__,
by _____.

(Seal)

Notary Public, State of Montana

Dated this ____ day of _____, 20__.

Signature of Purchaser(s)

Printed name(s)

State of Montana

County of _____

This instrument was signed before me on the ____ day of _____, 20__,
by _____.

(Seal)

Notary Public, State of Montana

Adopted 8/6/2019

Dated this _____ day of _____, 20____.

Jefferson County, Montana

Chair, Jefferson County Commission

Attest:

(Seal)

Bonnie Ramey
Jefferson County Clerk and Recorder

EXHIBIT C
EXEMPTION FROM SANITARY REVIEW

STATE OF MONTANA)

: ss.

AFFIDAVIT

COUNTY OF JEFFERSON)

COMES NOW, _____ and being first duly sworn, deposes and upon his/her oath answers the following:

1. I am the registered owner of the tract of land set forth in the accompanying Certificate of Survey # _____;
2. If you are not the owner, please describe your relationship to the contract holder or entity owning the property. _____;
3. The parcels subject to this survey are exempt from sanitary review by the Montana Department of Environmental Quality because none of the parcels being created by this certificate of survey are parcels where sanitation facilities will be used and no structure requiring water or sewage disposal will be erected upon these parcels.

LANDOWNER

SUBSCRIBED AND SWORN TO before this _____ day of _____, 20____

(NOTARIAL SEAL)

Notary Public, State of Montana

Residing at: _____

My Commission expires: _____

EXHIBIT D
BOUNDARY RELOCATION AFFIDAVIT

STATE OF MONTANA)

: ss.

AFFIDAVIT

COUNTY OF JEFFERSON)

COMES NOW, _____, and being first duly sworn, deposes and upon his\her oath answers the following:

1. Who is the owner of record of this property? _____
_____. If you are not the owner, please describe
your relationship to the contract holder or entity owning the property. _____

2. Is this property subject to any mortgages, trust indentures, deeds of trust, liens,
including judgment liens, or encumbrances? (N.B.: The office of the Jefferson County Clerk
and Recorder does not do a title search for these.) _____
3. Does the relocation of the common boundaries create additional tracts of land?

4. Why are you proposing the relocation of the common boundaries? _____

5. Does relocation of the common boundary cause any parcel to become smaller than
twenty (20) acres in size? _____

LANDOWNER

SUBSCRIBED AND SWORN TO before this _____ day of _____, 20____

(NOTARIAL SEAL)

Notary Public, State of Montana
Residing at: _____
My Commission expires: _____

EXHIBIT E
AGGREGATION AFFIDAVIT

STATE OF MONTANA)
 : ss.
COUNTY OF JEFFERSON)

AFFIDAVIT

COMES NOW, _____, and
being first duly sworn, deposes and upon his/her oath answers the following:

1. Who is the owner of record of this property? _____
_____. If you are not the owner, please describe
your relationship to the contract holder or entity owning the property.

2. Are the parcels intended to be aggregated contiguous parcels? _____
3. Are the parcels located within a zoning district (i.e. North Jefferson County, Milligan
Canyon/Boulder Valley, Sunlight – zoning map is available through Jefferson County’s
website) _____
If in a zoned area, does the proposal comply with the zoning? _____
4. How many parcels are involved in the aggregation? _____
5. How many parcels will exist following the aggregation? _____
6. Are any of the resulting parcels smaller than twenty (20) acres in size?

7. Why are you proposing the aggregation? _____

8. Is this property subject to any mortgages, trust indentures, deeds of trust, liens,
including judgement liens, or encumbrances? (N.B.: The office of the Jefferson County Clerk
& Recorder does not do a title search for these.) _____

LANDOWNER

SUBSCRIBED AND SWORN TO before this _____ day of _____, 20____

(NOTARIAL SEAL)

Notary Public, State of Montana
Residing at: _____
My Commission expires: _____